IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 8204 of 2004

Between:

1 Mohd. kalid Ahmed S/o. Mohd. Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.
2 Mohd. Mahaboob Ahmed, S/o. Mohd. Khalid Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.
3 Mohd. Maqbool Ahmed, S/o. Mohd. Khalid Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.
4 Mohd. Rafiq Ahmed, S/o. Khalid Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.
5 Mohd. Naseer Ahmed, S/o. Mohd. Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.
6 Mohd. Basheer Ahmed, S/o. Mohd. Ahmed,
R/o. 20-4-2091/3/7, Khilawath, Near Charminar, Hyderabad.

..... PETITIONERS

AND

The Mandal Revenue Officer, Bahadurpura, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate wit, order or direction, one in the nature of Mandamus declaring the notice issued by the respondent herein under Section 7 of the A.P. Land Encroachment Act, Act 3 of 1905 in B/E/489/03, dated 22.4.2004, as arbitrary, illegal, colourable exercise of power, apart from being violative of the Fundamental and Constitutional Rights guaranteed to petitioners.

Counsel for the Petitioners: MR.C.V.MOHAN REDDY

Counsel for the Respondent: GP FOR REVENUE

The Court made the following:

ORDER:

The petitioners, who are six in number, assail a notice under Section 7 of the A.P. Land Encroachment Act, 1905 (LE Act, for brevity) dated 22.4.2004 issued by the respondent herein. By the said notice, the respondent while informing the petitioners that the land in T.S. No.188, Block Q, Ward No.288 admeasuring 376 Sq. mts. is a Government Abadi land as per Town Survey Land Records, that the petitioners are in unauthorized occupation of the land and that they are given notice to show cause as to why they should not be evicted from the land. It is the case of the petitioners that the property originally belonged to Smt. Hamidunnisa Begum, W/o. Iqbaluddin, who purchased property in a Court auction in 1960. She allegedly sold the property to Smt. Kamalamma and after her death, her sons inherited the property. It is also the case of the petitioners that Sri C. Prakash Rao, one of the sons of Smt. Kamalamma leased the property to the third petitioner on a monthly rental of Rs.2,000/- (Rupees Two thousand only) for the purpose of carrying on bangle business. There was a dispute between the lessor and lessee and the third petitioner filed a suit being O.S. No.463 of 2002. The Civil Court passed an order of *status quo* in I.A. No.314 of 2002. The petitioners allege that the lessor ultimately agreed to sell the property to the petitioners and under registered sale deed dated 24.5.2002, the petitioners purchased the property. Therefore, they contend that they are the rightful owners of the property, and therefore, a resort to the provisions of LE Act is not warranted. It is stated that when the respondent tried to demolish the structures, they filed a writ petition being W.P.No.14441 of 2002 and this Court disposed of the same on 28.11.2003 directing the respondent herein and two others not to interfere with the possession and enjoyment of the petitioners without initiating proceedings in accordance with law. Thereafter, the notice under Section 7 of LE Act was issued to the petitioner.

It is the contention of the learned Counsel for the petitioners that summary procedure contemplated under LE Act cannot be followed to the case of the petitioners as they purchased the property from the original owners. The reliance is also placed on the decision of the Supreme Court in **Government of A.P. v. Thummala Krishna Rao**[1].

This Court while admitting the writ petition passed interim order staying all further proceedings. The Mandal Revenue Officer, the sole respondent, has now filed WVMP No.1620 of 2004 for vacating the interim order. As the respondent only issued a show cause notice and ordinarily this Court is not inclined to interfere in the writ petitions filed against show cause notices, the matter is being disposed of with the consent of the learned Counsel for the petitioners and the learned Government Pleader for Revenue for the Respondent.

In the counter affidavit filed by the respondent, suffice to say that as per the revenue records and Town Survey Land Records, the land admeasuring 376 Sq. mts. (out of

636 Sq. mts. in possession of the petitioners) is a Government land in T.S. No.188 Block Q and Ward No.288, and therefore, the impugned notice was issued.

It is now well settled that against show cause notice, writ petition would not lie. Even where the question of jurisdiction of the authority issuing such show cause notice is raised, a writ petition is not maintainable. A reference may be made to the decision of the Supreme Court in **Special Director v. Mohd. Ghulam Ghouse**[2] wherein it was held:

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This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. **Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue, which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.** Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

(emphasis supplied)

In view of the said position, without expressing any opinion, this writ petition is disposed of giving liberty to the petitioners to submit explanation to the notice within a period of two weeks along with necessary documentary evidence. As and when such explanation is submitted, the Mandal Revenue Officer shall consider the same and pass appropriate orders in the matter. Till then, the possession of the petitioners shall not be disturbed.

The writ petition is accordingly disposed of.

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V.V.S. RAO, J

October 1, 2004.

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To

1. The Mandal Revenue Officer, Bahadurpura, Hyderabad.
2. Two CCs to the Government Pleader for Revenue, High Court Buindings, Hyderabad (O.U.T)
3. Two C.D. Copies.